Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

VOLUME II

APPENDIX

* * *

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-6

* * *

HILMAR G. MOORE, ET AL.,

v.

JOHN PLEASANT SIMS, ET AL.

* * *

APPEAL FROM THE U.S. DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF TEXAS, HOUSTON DIVISION

* * *

JURISDICTIONAL STATEMENT FILED
JULY 3, 1978
PROBABLE JURISDICTION NOTED
OCTOBER 30, 1978

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ARTICLE 14

ORIGINAL PETITION IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

ARTICLE 14, ORIGINAL PETITION IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

To the Honorable Ernest Coker, Judge of Juvenile Court ____ of Montgomery, County, Texas.

This suit is brought by Carol B. Jones Petitioner who is a resident of Montgomery County, Texas.

This court has continuing jurisdiction of this suit.

The following child is the subject of this suit:

Name: Paul Sims Sex: Male

Birthplace: Harrison County, Texas Birthdate: 12-10-67

Present Residence: Rt. 3, Box 1304, Conroe, Texas

The mother of the child is Mary L. Sims who was born 12-5, 1942, and who resides at Rt. 3, Box 1304, Conroe, Texas.

The father of the child is John P. Sims who was born 4-23, 1942, and who resides at Rt. 3, Box 1304, Conroe, Texas.

There are no court-ordered conservatorships, guardianships, or other court-ordered relationships affecting the child in this suit.

No property is owned or possessed by the child.

Petitioner alleges that the appointment of a Managing Conservator by the Court would be in the best interest of the child and Petitioner requests that the Court appoint Helen Juris, Supervisor, Texas Department of Public Welfare as Managing Conservator contingent upon Montgomery County Funds being made available to pay the cost of foster care for the child. As grounds for such request Petitioner alleges:

I.

That on 3-25-76, said child, Paul was examined by Dr. Marie Surgi and was found to have severe bruises all over his body. (see attached reports).

II.

That said child states that he was paddled by his father.

III.

That on 3-27-76, said child was hospitalized for treatment for his injuries.

IV.

That on 5-5-76, John Singleton, District Judge, U.S. District Court, Southern District of Texas, ordered that Harris County Child Welfare Unit release the child to his parents as the child was being held without legal authority.

V.

That the physical and emotional well-being of the child is endangered by his being returned to his parents.

Petitioner alleges that the issuance of a Writ of Attachment is necessary to protect the child from further abuse or neglect and, the appointment of a managing conservator would be in the best interest of the child and requests the Court to make this appointment as provided by Sec. 14.01 (a), Texas Family Code.

Petitioner requests the Court appoint a guardian ad litem to represent the interest of the child as provided by Sec. 11.10 (a), Texas Family Code.

Petitioner requests the Court to order the respondents to pay a reasonable amount of child support pending

further orders of the Court.

Petitioner prays that citation be issued to all persons so entitled under the law.

Petitioner prays the Court to enter its order in accordance with the allegations in this petition.

Petitioner prays for general relief.

ARTICLE 15

DEFENDANTS' ANSWERS TO PLAINTIFFS' REQUESTS FOR ADMISSIONS

ARTICLE 15, DEFENDANTS' ANSWERS TO PLAINTIFFS' REQUESTS FOR ADMISSIONS

The following are the answers of defendants to the plaintiffs' requests for admissions served on defendants on September 20, 1976:

1. On March 25, 1976, adult and minor plaintiffs maintained a residence located at Route 3, Box 1304, Conroe, Montgomery County, Texas.

ANSWER: Defendants admit the matter stated therein.

2. On March 25, 1976, the three minor plaintiffs were enrolled in and regularly attending classes at John G. Osborne Elementary School in Houston, Harris County, Texas, of which adult plaintiffs paid a monthly tuition charge to the Houston Independent School District.

ANSWER: Defendants admit the matter stated therein.

3. Minor plaintiff Sabrina Marie Sims, the only natural child of adult plaintiffs, was born to them August 16, 1967, and is now age nine years.

ANSWER: Defendants admit the matter stated therein.

3a. Minor plaintiff Paul Edward Sims was born December 10, 1967, is now age eight years, and was adopted by adult plaintiffs through Harris County Child Welfare Unit (hereafter referred to as Child Welfare) pursuant to Decree of Adoption granted July 18, 1974, by Robert L. Lowry, Judge of the Juvenile Court of Harris County, Texas (hereafter referred to as Juvenile Court).

ANSWER: Defendants admit the matter stated therein.

3b. Minor plaintiff Shawana Evette Sims was born March 2, 1969, is now age seven years, and was adopted by adult plaintiffs through Child Welfare pursuant to Decree of Adoption granted by Judge Lowry on August 12, 1975.

ANSWER: Defendants admit the matter stated therein.

4. On March 25, 1976, in response to a telephone report of child abuse made by personnel of John G. Osborne Elementary School regarding only the minor plaintiff Paul Edward Sims, Child Welfare's agent and employee Caseworker Rex Downing went to the school.

ANSWER: Defendants admit the matter stated therein.

4a. That Rex Downing took possession and control of not just Paul Edward Sims regarding whom the report of child abuse had been made, but the two other Sims Children as well, and did so shortly after 1:30 P.M. on that day, caused all three to be transported to the Child Welfare Clinic at 4040 Milam, Houston, Texas, where all three were examined by Dr. Marie L. Surgi over the express objection of adult plaintiffs.

ANSWER: Defendants deny that Rex Downing took possession and control of the Sims children shortly after 1:30 P.M. because Mr. and Mrs. Sims gave permission for their children to be taken from the school to the Harris County Child Welfare Clinic and because Rex Downing did not take possession and control of the Sims children until after 5:00 P.M. at the Harris County Child Welfare Clinic; and defendants deny that all three Sims children were examined by Dr. Marie L. Surgi over the express objection of Mr. and Mrs. Sims because Mr. and Mrs. Sims gave permission for Dr. Surgi to examine the Sims' children.

5. No writ of a magistrate was obtained by Downing prior to his taking possession and control of the three minor plaintiffs, and the only notice given to adult plaintiffs of the seizure of their children was by a telephone call to John Sims on his job by the school principal.

ANSWER: Defendants admit that no writ of magistrate was obtained by Rex Downing prior to taking possession and control of the three minor plaintiffs but defendants deny the remainder of this request because there was also a telephone call to Mary Sims and because both Mr. and Mrs. Sims had actual notice when possession of their children was taken at the Harris County Child Welfare Unit.

6. That Caseworker Downing who went to the school on March 25, 1976, to make investigation interviewed the minor plaintiff Paul Sims who had been the subject of the telephone report of abuse for "Maybe a couple of minutes, three minutes."

ANSWER: Defendants admit the matter stated therein.

6a. Neither of the parents were interviewed prior to his taking possession and control of their three children.

ANSWER: Defendants deny the matter stated therein.

7. The minor plaintiffs were not delivered to any court on the date of their seizure shorly (sic) after 1:30 P.M., March 25, 1976.

ANSWER: Defendants admit that minor plaintiffs were not delivered to any Court on the date they were taken into possession but otherwise defendants deny the matters stated in this request because minor plaintiffs were not taken into possession on March 25, 1976, until after 5:00 P.M.

8. The following day, March 26, 1976, at 4:45 P.M., Betsy C. Conner filed A Suit For Protection of Child In Emergency pursuant to provisions of Chapter 17, Title 2, Texas Family Code, which was docketed under Cause No. 38, 295 in the Juvenile Court Number One of Harris County, Texas, and in which all three minor plaintiffs were made subjects of suit.

ANSWER: Defendants admit the matter stated therein.

9. No names or places of residence of the parents of persons responsible for the care of the three minors appear at any place in the suit referred to in Paragraph 7, supra, although the Petitioner therein requests "that citation and notice be issued to all persons named."

ANSWER: Defendants admit the matter stated therein if the reference to Paragraph 7 is intended to be Paragraph 8.

10. Fifteen minutes after time of filing of such suit and at 5:00 P.M. on March 26, 1976, Judge Robert L. Lowry of the Harris County Juvenile Court entered an Ex Parte Order by the terms of which Gene Lege, Director of Harris County Child Welfare was made temporary managing conservator of the three minor plaintiffs.

ANSWER: Defendants admit the matter stated therein.

10a. On its face such Ex Parte Order recites that the matter was presented to the Court in chambers, without notice to or hearing afforded the adult plaintiffs.

ANSWER: Defendants admit the matter stated therein.

10b. Harris County Child Welfare did not deliver the three minor plaintiffs to the Court on March 26,

1976, nor did Judge Lowry require such delivery.

ANSWER: Defendants deny the matter stated therein because the three minor plaintiffs were constructively delivered to the Court on March 26, 1976, when the Petition was filed with the Court.

11. No notice, citation or process of any kind was ever issued or served upon the adult plaintiffs in connection with the suit docketed as Cause No. 38,295 filed March 26, 1976.

ANSWER: Defendants admit the matter stated therein.

12. On March 31, 1976, counsel for the adult plaintiffs filed a Motion to Modify Temporary Orders for Emergency Protection of Child with attached proposed Order Modifying Temporary Orders. Both instruments were stamped "Received" and "JUV" by the Clerk of the Juvenile Court but were returned to counsel by the Clerk who had been instructed not to set a hearing.

ANSWER: Defendants deny the matter stated therein except that it is admitted that the instruments cited were stamped "JUV". Moreover, defendants specifically deny that the Clerk was instructed not to set a hearing but rather contend that the adult plaintiffs' counsel voluntarily withdrew the cited instruments.

13. On March 31, 1976, counsel for adult plaintiffs also filed a Petition For Writ of Habeas Corpus seeking return of the three minor plaintiffs, which suit was docketed as Cause No. 1,069,341 in the Juvenile Court Number One of Harris County, Texas, and upon which a hearing was set for April 5, 1976, at 10:30 A.M.

ANSWER: Defendants admit the matter stated therein.

14. Adult plaintiffs caused notice of the filing of their Petition For Writ of Habeas Corpus and of the hearing set thereon to be served upon Gene Lege, Director of Harris County Child Welfare and also issued Subpoenas for attendance of witnesses.

ANSWER: Defendants admit the matter stated therein.

15. On the date and at the time scheduled for hearing on the Petition For Writ of Habeas Corpus, Judge Lowry determined that all of the plaintiffs were residents of Montgomery County, Texas.

ANSWER: Defendants admit the matter stated therein.

15a. Upon such determination and without receiving evidence, the Court ruled it did not have power to hear the habeas corpus proceeding, although Judge Lowry had personal knowledge the there (sic) minor plaintiffs were restrained in Harris County, Texas, by virtue of his own Ex Parte Order entered March 26, 1976.

ANSWER: Defendants admit the matter stated therein.

15b. The Docket Sheet entry made in Cause No. 1,069,341 in the handwriting of Robert L. Lowry, Judge of the Juvenile Court Number One of Harris County, Texas, on April 5, 1976, reads as follows: "Venue in Montgomery County - Case transferred to Montgomery County."

ANSWER: Defendants admit the matter stated therein.

16. Later and at 4:47 P.M. on April 5, 1976, Betsy C. Conner filed a second suit in Cause No. 38,295 on the docket of the Juvenile Court Number One of Harris

County, Texas, entitled Original Petition In Suit Affecting the Parent-Child Relationship.

ANSWER: Defendants admit the matter stated therein.

17. At a time subsequent to the 4:47 P.M. filing of the Original Petition referred to in Paragraph 15, supra, but still on April 5, 1976, Judge Lowry entered a second Ex Parte Order continuing temporary managing conservatorship, possession and control of the three minor plaintiffs in Gene Lege, Director, Harris County Child Welfare.

ANSWER: Defendants admit the matter stated therein.

17a. This second Ex Parte Order setting both temporary and final hearings in the second suit shows them both to be set for "the ___ day of _____, 19__ at ___ o'clock ___m." and appoints "An attorney _____ ... to serve as guardian ad litem and attorney ad litem and represent the minor child(ren) at all hearings ..." On its face this same Order recites it was presented to the Court in chambers, again without notice to or hearing afforded the adult plaintiffs.

ANSWER: Defendants admit the matter stated therein.

17b. On May 5, 1976, at hearing in the Federal Court, there was testimony adduced that the blanks appearing in the Order had never been filled in.

ANSWER: Defendants admit the matter stated therein.

18. On April 6, 1976, Docket Sheet entries made in the handwriting of Judge Lowry show the Suit Affecting The Parent-Child Relationship (Cause No. 38,295) and the Habeas Corpus proceeding (Cause No.

1,069,341) were transferred to the Juvenile Court of Montgomery County, Texas, while the minor plaintiffs remained in Harris County in the possession of Harris County Child Welfare.

ANSWER: Defendants admit the matter stated therein.

19. From date of seizure of the three minor plaintiffs on March 25, 1976, through April 6, 1976, there was not notice to or opportunity for hearing afforded any of the plaintiffs by the Juvenile Court of Harris County, Texas, nor were the minor plaintiffs ever delivered to the Court by Harris County Child Welfare during such period.

ANSWER: Defendants deny the matter stated therein because there was a Habeas Corpus hearing before the Juvenile Court of Harris County, Texas, on April 5, 1976, at which the two female minor plaintiffs were present. Also, the plaintiffs had the opportunity to file a Motion to Modify and receive a hearing on that motion.

20. On April 9, 1976, the full file in Cause No. 38,295 transferred by the Juvenile Court Number One of Harris County, Texas, was received by the Juvenile Court of Montgomery County, Texas, and docketed under Cause No. 3,030.

ANSWER: Defendants admit the matter stated therein.

21. From April 6, 1976, when the file was received by the Montgomery Juvenile Court up to and including May 5, 1976, the first date of hearing before this Court, no notice, citation or process of any kind was issued or served upon the adult plaintiffs in Cause No. 3,030 nor were they afforded opportunity for hearing before the Juvenile Court of Montgomery County, Texas.

ANSWER: Defendants admit the matter stated therein.

21a. The three minor plaintiffs remained in the possession and control of Harris County Child Welfare during such period referred to in item 21.

ANSWER: Defendants admit the matter stated therein.

22. On May 4, 1976, still seeking return of their children, adult plaintiffs filed an Application For Leave To File Writ of Habeas Corpus in the Court of Civil Appeals, 14th Supreme Judicial District of Texas, sitting in Houston. Such Application was denied by the Court for lack of jurisdiction on May 4, 1976.

ANSWER: Defendants admit the matter stated therein.

23. Plaintiffs' First Complaint was filed with the Federal Court on April 19, 1976.

ANSWER: Defendants admit the matter stated therein.

23a. The first hearing afforded plaintiffs after seizure of the three minors on March 25, 1976, was that of May 5, 1976, before Honorable John V. Singleton, Jr., who ordered return of the three minor plaintiffs to the adult plaintiffs.

ANSWER: Defendants deny the matter stated therein because there was a Habeas Corpus hearing held in Harris County Juvenile Court on April 5, 1976.

24. Nine days after this Court ordered return of the minor plaintiffs, a third suit was begun by the filing of an Original Petition In Suit Affecting the Parent-Child Relationship which was docketed as Cause No. 3,090 in the Juvenile Court of Montgomery County, Texas, on

May 14, 1976.

ANSWER: Defendants admit the matter stated therein.

25. The suit filed in Montgomery County on May 14, 1976, referred to in Paragraph 24, supra, pertained only to the minor plaintiff Paul Edward Sims and had attached as an Exhibit the identical Exhibit attached to the suit filed March 26, 1976, in Harris County, Texas, under Cause No. 38,295.

ANSWER: Defendants admit the matter stated therein.

26. Based upon medical information and other information which was fifty (50) days old, Ernest L. Coker, Sr., Judge of the Juvenile Court of Montgomery County, Texas, issued an Ex Parte Writ of Attachment for the minor plaintiff Paul Edward Sims on May 14, 1976.

ANSWER: Defendants admit the matter stated therein.

27. On May 21, 1976, counsel for plaintiffs made application for and Honorable John V. Singleton, Jr. entered a Temporary Restraining Order which was followed by an Order of Preliminary Injunction of this three-judge court entered June 18, 1976, restraining and enjoining defendants from filing or prosecuting any state suit based upon the state statutes to which plaintiffs have lodged this constitutional challenge.

ANSWER: Defendants admit the matter stated therein.

28. This three-judge Court found "irreparable harm and injury to plaintiffs: 1) by the very fact that in the initial proceeding initiated by the State the plaintiffs' family unit was disrupted for a total of forty-two (42)

days without any type of relief afforded to plaintiffs; and 2) if the defendants were allowed to initiate further proceedings plaintiffs would be placed in a similar situation as they had been prior to obtaining Federal Court relief."

ANSWER: Defendants admit the matter stated therein.

29. The names of all the plaintiffs now appear as perpetrator and/or victims of child abuse in a Central Registry maintained by the Texas State Department of Public Welfare in Austin, Texas, by two separate incidents: March 25, 1976 (date of initial seizure of the three minor plaintiffs) and May 5, 1976 (the date on which minor plaintiffs were ordered restored to adult plaintiffs by this Court), although no judicial finding of any such abuse has been made.

ANSWER: Defendants admit the matter stated therein except that May 5 is not the date of a separate "incident", but rather is merely the date on which the Montgomery County Department of Public Welfare worker filed a CANRIS report on the referral of the Sims matter from Harris County.

29a. That Raymond Vowell, Commissioner, State Department of Public Welfare of Texas, has answered by Interrogatory No. 10 that "the source of the report has been deleted in accordance with §34.08 of the Texas Family Code."

ANSWER: Defendants admit the matter stated therein.

30. Information gathered by the Harris County Child Welfare in the course of adoption of the minor plaintiffs Paul Edward Sims and Shawana Evette Sims by the adult plaintiffs in 1974 and 1976 was not retired and sealed following such adoptions.

ANSWER: Defendants deny the matter stated therein because the information gathered by Harris County Child Welfare in the course of the adoption of the minor plaintiffs, Paul Edward Sims and Shawana Evette Sims, by the adult plaintiffs in 1974 or 1975 was "retired" because it was placed in closed files separate and apart from other files at the Harris County Child Welfare Unit.

30a. That such information was referred to and used by such agency and also transmitted to the Montgomery County agency of the Department during the time of their seizure, possession and control of the minor plaintiffs.

ANSWER: Defendants admit that such information was referred to and used by the Harris County Child Welfare Unit employees, but Defendants deny that such information was also transmitted to the Montgomery County agency of the department.

31. That John Pleasant Sims and Mary Carter Sims were required by the State Department to attend counseling sessions under Doctors Blair and Rita Justice at the Southwestern Institute for Group and Family Therapy.

ANSWER: Defendants deny that John Pleasant Sims and Mary Carter Sims were required by the State department of (sic) attend counseling sessions under Doctors Blair and Rita Justice, but defendants admit that they were requested to do so.

31a That the Sims were referred to Dr. A. A. Johnstone, for psychiatric evaluation by Dr. Blair Justice, acting as an agent of the State Department.

ANSWER: Defendants admit that Mr. and Mrs. Sims were referred to Dr. E. E. Johnstone, not Dr. A. A. Johnstone, by Doctor Blair Justice, but defendants deny

that Dr. Justice was acting as an agent for the State Department.

32. That on or about March 31, 1976, and before the May 5, 1976, hearing in Federal Court, that Rex Downing as caseworker for the Harris County Child Welfare Unit knew or had cause to know of Paul Sims' statements that "his teacher Mrs. Rhea had spanked him on March 25, 1976, at the John G. Osborne Elementary School.

ANSWER: Defendants admit that on some date before the May 5, 1976, hearing in Federal Court, Rex Downing knew or had cause to know of Paul Sims' statements alleging that his teacher had spanked him at school on March 25, 1976.

33. That Paul Edward Sims was given a psychological evaluation by the State Department, the result of which has not been furnished to plaintiffs.

ANSWER: Defendants admit the matter stated therein.

34. That Rex Downing, Harris County Child Welfare Worker recommended Termination of the Parent-Child Relationship between the Sims and Paul Edward Sims and a Severe Interruption of the Parental Relationship between the Sims and Sabrina E. and Shawana Y. Sims.

ANSWER: Defendants admit that Rex Downing had recommended Termination of the Parent-Child Relationship between the Sims and Paul Edward Sims, but deny that he had recommended a "Severe Interruption of the Parental Relationship between the Sims and Sabrina E. and Shawana Y. Sims."

ARTICLE 16

DEFENDANTS' ANSWERS TO PLAINTIFFS' ORIGINAL INTERROGATORIES (VOWELL)

ARTICLE 16, DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES

NOW COMES RAYMOND W. VOWELL, Commissioner of Public Welfare, Defendant in the above-styled and numbered cause and answers Plaintiff's Original Interrogatories as follows:

INTERROGATORY NO. 1. "State your full name and address."

ANSWER. Raymond W. Vowell
John H. Reagan Building
Austin, Texas

INTERROGATORY NO. 2. "State the nature of your employment on March 25, 1976 and your official capacity in connection with such employment."

ANSWER. Commissioner of Public Welfare

INTERROGATORY NO. 3. "Are you responsible for discharging all executive and administrative functions of the Texas State Department of Public Welfare?"

ANSWER. Yes.

INTERROGATORY NO. 4. "Does the Texas State Department of Public Welfare receive any federal funding for conducting activities related to child abuse? If so, please state each and every federal agency from whom such funds are received."

ANSWER. Yes. The Department of Health, Education and Welfare.

INTERROGATORY NO. 5. "Pursuant to the provisions of §34.06, Title 2, Texas Family Code, does your department maintain in Austin, Texas a central registry of reported cases of child abuse?"

ANSWER. Yes.

INTERROGATORY NO. 6. If your answer to interrogatory No. 5 is in the affirmative, has your department adopted rules and regulations to carry out the provisions of §34.06, Title 2, of the Texas Family Code?"

ANSWER. Yes.

INTERROGATORY NO. 7. "If your answer to interrogatory No. 6 is in the affirmative, will you attach a copy of such regulations without a Motion to Produce?"

ANSWER. Yes, Attached hereto as exhibit "A" are section 7222 of the current Social Services Handbook, forms and instructions for the Child Abuse and Neglect Report and Inquiry System (CANRIS), and amended rules adopted by the Board of Public Welfare.

INTERROGATORY NO. 8. "If your answer to interrogatory No. 5 is in the affirmative, does such central registry contain the names of any of the minor or adult plaintiffs?"

ANSWER. Yes.

INTERROGATORY NO. 9. "If your answer to interrogatory No. 8 is in the affirmative, state the names and dates such names were placed in such registry and what caused such information to be placed in such registry."

ANSWER. The names of Paul Sims, Sabrina Sims, Shawana Sims and John Sims were placed in the CANRIS file on March 25, 1976, as a result of a report of child abuse. The names of Paul Sims, Sabrina Sims, Shawana Sims, John Sims and Mary Sims were placed in the CANRIS file on May 10, 1976, as a result of another report of child abuse.

INTERROGATORY NO. 10. "If your answer to interrogatory No. 8 is in the affirmative, will you attach a copy of such information without a Motion to Produce?"

ANSWER. Yes. Attached hereto as exhibit "B", are copies of information contained in the CANRIS file, except that the source of the report has been deleted in accordance with §34.08 of the Texas Family Code.

INTERROGATORY NO. 11. "If your answer to interrogatory No. 8 is in the affirmative, has such information been transmitted to any other registry or agency? If so, what information was sent, when was it sent, and to whom?"

ANSWER. The names of the minor or adult plaintiffs have not been transmitted to any other registry or agency. However, statistical information which does not identify any individuals and which is derived from all combined reports in the CANRIS file is sent upon request to the National Study on Child Neglect and Abuse Reporting (formerly the National Clearinghouse on Child Abuse and Neglect), c/o The American Humane Association, Children's Division, P. O. Box 1319, Denver, Colorado, 80201. No such request has been received since January, 1976.

INTERROGATORY NO. 12. "If your answer to interrogatory No. 8 is in the affirmative, has any information regarding the minor or adult plaintiffs been removed from any registry, state or national, or any other agency?"

ANSWER. Information regarding the minor and adult plaintiffs in the CANRIS file has not been removed. I have no knowledge of information regarding the minor or adult plaintiffs in any other state or national registry or agency.

INTERROGATORY NO. 13. "When an adoption from the Department has been closed, are the records from the local agencies pulled and sealed?"

ANSWER. On entry of a decree of adoption the records required by the Family Code to be maintained in the Central Record File are pulled and sealed, and records maintained by local child welfare units are removed from active files and placed in inactive secured files.

INTERROGATORY NO. 14. "For the period beginning September 1, 1975 through May 31, 1976, state the total number of reports received by the Texas State Department of Public Welfare under color or provision of §§34.01, §§34.02, Title 2, Texas Family Code, if any."

ANSWER. The Department's computerized statistical information in the CANRIS file concerns only the number of abuse/neglect reports received by the Department and reported to CANRIS. From September 1, 75 to May 31, 1976, there were 27,671 reports made to CANRIS. This is the number of reported incidents, not the number of children or families. There is generally more than one child per reported incident, and a family may be reported more than once if abuse or neglect reoccurs. Under §34.02 of the Family Code the information requested would also include reports of truant and runaway children. Full information concerning these reports is available only in individual case records located in over 160 offices throughout the state and certain statistical information concerning such reports could be obtained from the Department's computerized Social Services Management (SSMS) file only by special programming. If this is done the implementation of revisions in the SSMS system which are now being developed will be delayed by an amount of time equal to that required to do the special programming.

INTERROGATORY NO. 15. "For the total number, if any, given in your answer to interrogatory No. 14, state separately as to each such report:

a. The date and time of receipt of such report,

ANSWER. Special programming would be required to extract this information from the computerized statistical information contained in the CANRIS file. It is estimated that the special programming necessary to obtain the information requested in Interrogatories 15a, 15c, 15e and 15f would take two weeks if this programming were given priority over current assignments. If this is done the implementation of revisions in the CANRIS system which are now being developed will be delayed by an amount of time equal to that required to do the special programming.

b. Whether such report was oral or in writing,

ANSWER. This information is not included in the computerized statistical information contained in the CANRIS file. The full information requested can be obtained only by doing a desk review of child welfare cases in over 160 offices throughout the state. It is estimated that this would take a total of 25 manpower days per region and that the information gathering process would take two months if all the other requested information were gathered at the same time.

c. Whether such report was from an identified source or from an anonymous source,

ANSWER. From the inception of CANRIS on December 3, 1973 to May 31, 1976, 3,245 (or 5%) out of 65,843 initial reports had anonymous sources. The specific information requested is not currently available from existing reports. See the answer to Interrogatory 15a.

d. If same was an oral report, state whether it was made by telephone,

ANSWER. See the answer to Interrogatory 15b.

e. Whether any information received as a result of such report was placed in the "Central Registry" provided for by §§34.06, Title 2, Texas Family Code,

ANSWER. See the answer to Interrogatory 15a.

f. The date on which such information was placed in such Central Registry,

ANSWER. See the answer to Interrogatory 15a.

g. If any such information was placed in a central registry, state whether it has been disseminated to other registries,

ANSWER. Statistical information which does not identify individuals and which is derived from all combined reports in the CANRIS file is sent upon request to the National Study on Child Neglect and Abuse Reporting. See the answer to Interrogatory 11.

h. Whether any children were seized as a result of such report,

ANSWER. It is estimated that children are removed from their homes in only 10% of the cases in which abuse or neglect has been reported on one or more occasions. However, the specific information requested is not currently available in existing reports. Special programming would be required to extract this information from the statistical information contained in the Social Services Management System (SSMS) file. See the answers to Interrogatories 15a and 15b.

i. If you answer to the immediately preceding sub-interrogatory is in the affirmative, state the date and time of such seizure,

ANSWER. See the answer to Interrogatory 15h.

j. Whether any suit was thereafter filed by the State Department under color of any provisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of such report,

ANSWER. The Department's computerized CANRIS and SSMS systems do not gather "petition filed" information except on abuse and neglect cases through CANRIS and then do not distinguish whether the material was filed under Chapters 11 or 17 of the Family Code. The CANRIS "petition filed" information is not immediately available on all CANRIS cases. Present printouts are limited to finalized validated cases, and the reports indicate only the total numbers of petitions filed with respect to twenty-three (23) distinct types of injury or abuse. Since petitions are generally filed in cases involving more than one type of injury, the currently available statistics do not provide the requested information concerning the actual number of petitions filed in relation to the number of reports received, children involved or cases being handled. Gathering the requested "petition filed" statistics on all CANRIS cases would require special programming which it is estimated could be completed within two weeks if priority were given to this assignment over other current assignments. A copy of the statistical information which is currently available is attached as Exhibit C.

k. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state whether the State Department sought termination of the parent-child relationship in such suit,

ANSWER. The full information requested can be obtained only through a desk review of child welfare cases in over 160 offices throughout the state. See the answer to Interrogatory 15b.

l. Whether any suit is pending, concluded by final trial or dismissed if such suit was filed by the State Department under color of any provisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of any report,

ANSWER. See the answer to Interrogatory 15k.

m. If your answer to the immediately preceding interrogatory is "concluded by final trial" state whether or not same resulted in termination of the parent-child relationship."

ANSWER. See the answer to Interrogatory 15k.

16. "For the period September 1, 1975 through May 31, 1976, state the total number of petitions filed by the Texas Department of Public Welfare under color or provisions of §§17.01 and §§17.02, Title 2, Texas Family Code, if any."

ANSWER. The Department's computerized CANRIS and SSMS files do not contain the information requested. The information requested can be obtained only through a desk review of all child welfare cases in over 160 offices throughout the State. See the answer to Interrogatory 15b.

INTERROGATORY NO. 17. "For the total number, if any, given as your answer to Interrogatory No. 16, state separately as to each such petitions filed:

a. The number of children seized,

ANSWER. The full information requested can be obtained only by doing a desk review of child welfare cases in over 160 offices throughout the State. If this information were gathered at the same time as the other requested information, it is estimated that this would take an average of 15 additional manpower days per region and that the complete information gathering process would take three to four months.

b. The date and time of seizure,

ANSWER. See the answer to Interrogatory 17a.

c. The date and time of filing of such petition,

ANSWER. See the answer to Interrogatory 17a.

d. Whether counsel was appointed for the minors seized: and if so, give the name and address and date of appointment of counsel,

ANSWER. See the answer to Interrogatory 17a.

e. The names and locations of the court in which such petitions were filed and the cause number under which such petition was docketed,

ANSWER. See the answer to Interrogatory 17a.

f. The date and time the child was first delivered to the court following seizure,

ANSWER. See the answer to Interrogatory 17a.

g. The date, time, and place of the hearing held providing for temporary care and protection of the child seized,

ANSWER. See the answer to Interrogatory 17a.

h. Whether the parent, guardian, managing conservator, and/or person responsible for the care of the child received notice of such hearing,

ANSWER. See the answer to Interrogatory 17a.

i. Names of the persons present at such hearing,

ANSWER. See the answer to Interrogatory 17a.

j. The date and time of entry of any order providing for the temporary care and protection of the child seized,

ANSWER. See the answer to Interrogatory 17a.

k. Whether temporary managing conservator was appointed for the child seized,

ANSWER. See the answer to Interrogatory 17a.

l. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state the name and address of the person so appointed, any official title, and the relationship of such person to the child,

ANSWER. See the answer to Interrogatory 17a.

m. The date and manner by which the parent, managing conservator, guardian, and/or person responsible for the care of the child seized was first notified of the seizure,

ANSWER. See the answer to Interrogatory 17a.

n. The date and names, if any, by which these parents, managing conservators, guardians, and/or persons responsible for the child were first notified of the filing of such petition,

ANSWER. See the answer to Interrogatory 17a.

o. Whether or not the parent, managing conservator, guardian, and or person responsible for the care of the child was furnished a copy of the petition filed, and if so, the date on which such copy was furnished,

ANSWER. See the answer to Interrogatory 17a.

p. The date and time, if any, on which the parent, managing conservator, guardian, and/or person responsible for the care of the child was first afforded a hearing after filing of such petition,

ANSWER. See the answer to Interrogatory 17a.

q. Whether the child seized, if any, has been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child and, if so, the date and time of such return,

ANSWER. See the answer to Interrogatory 17a.

r. Whether, if the child seized has not been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child, the parent-child relationship has been terminated or termination is presently pending."

ANSWER. See the answer to Interrogatory 17a.

ARTICLE 17

DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES (LOCKLEY)

ARTICLE 17, DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES

NOW COMES MARIAN LOCKLEY, Program Director for Social Services, Defendant in the above-styled and numbered cause and answers Plaintiff's Original Interrogatories as follows:

INTERROGATORY NO. 1. "What is your full name and present address?"

ANSWER. Marian Porter Lockley
114 E. Burleson
Wharton, Texas 77488

INTERROGATORY NO. 2. "State the name and address of your employer on March 25, 1976."

ANSWER. Texas State Department of Public Welfare
114 E. Burleson
Wharton, Texas
77488

John H. Reagan Building
Austin, Texas
78701

INTERROGATORY NO. 3. "Were you the chief administrative officer in charge of the operation of Montgomery County Welfare Unit?"

ANSWER. No. However, I am the Lead Program Director for Social Services for the Texas State Department of Public Welfare, outlying counties in the Houston region.

INTERROGATORY NO. 4. "Is Carol B. Jones an employee of the Montgomery County Welfare Unit?"

ANSWER. Carol B. Jones is an employee of the Texas State Department of Public Welfare assigned to Montgomery County.

INTERROGATORY NO. 5. "Please state the job

title and length of employment of Carol B. Jones."

ANSWER. Carol B. Jones is a Public Welfare Worker I and has been employed by the Texas State Department of Public Welfare for over six months.

INTERROGATORY NO. 6. "Did you or any other person instruct Carol B. Jones to file a suit affecting the parent-child relationship between the minor plaintiff Paul Sims and adult plaintiffs in Montgomery County, Texas?"

ANSWER. Yes.

INTERROGATORY NO. 7. "If your answer to Interrogatory No. 6 is in the affirmative, state the date and time of filing of such suit in Montgomery County, Texas."

ANSWER. Carol B. Jones filed such suit in Montgomery County, Texas, on the morning of May 14, 1976.

INTERROGATORY NO. 8. "Did any person connected with Montgomery County Welfare Department have personal knowledge or make personal investigation of the home of the adult plaintiffs?"

ANSWER. Assuming that Interrogatory No. 8 refers to Texas State Department of Public Welfare protective services workers assigned to Montgomery County, Texas, Carol B. Jones personally interviewed the adult plaintiffs John and Mary Sims on March 29, 1976, and March 31, 1976, in the presence of their attorney, Gladys Goffney.

INTERROGATORY NO. 9. "If your answer to Interrogatory No. 8 is in the negative, was the basis of the suit affecting the parent-child relationship filed by Montgomery County Welfare information obtained or furnished by Harris County Child Welfare?"

ANSWER. Not applicable.

INTERROGATORY NO. 10. "If your answer to Interrogatory Number nine is in the affirmative, what person furnished such information?"

ANSWER. Not applicable.

INTERROGATORY NO. 11. "What was the basis for the allegation in the Montgomery County suit filed May 14 that the physical and emotional well being of Paul Edward Sims was endangered?"

ANSWER. The allegation was based on medical reports obtained as a result of the examination of the child following receipt of a report of possible child abuse and also based on the investigation conducted as a result of the report.

INTERROGATORY NO. 12. "Did you have any medical information regarding Paul Sims later than that made by Dr. Surgi on March 25, 1976?"

ANSWER. Yes.

INTERROGATORY NO. 13. "Regarding the Montgomery County suit filed May 14, 1976, with respect to the allegation that it would be in the best interest of the child for Helen Juris to be appointed managing conservator, what would have happened to Paul Sims had Montgomery County funds not been available to pay for the cost of foster care?"

ANSWER. If county funds had been unavailable for foster care costs, the Court would have been informed by the Texas State Department of Public Welfare of the possibility of relative resources for the placement of Paul Sims.

INTERROGATORY NO. 14. "Was Carol B. Jones a licensed, practicing, attorney-at-law on May 14, 1976?"

ANSWER. No.

INTERROGATORY NO. 15. "If the answer to Interrogatory No. 14 is negative, who drafted the petition in Cause No. 3090 filed May 14, 1976?"

ANSWER. John C. Turner
Regional Attorney
Texas State Department of Public Welfare
2913 Louisiana
Houston, Texas 77006

INTERROGATORY NO. 16. "For the period beginning September 1, 1975 through May 31, 1976, state the total number of reports received by the Montgomery County Welfare Department under color of provision of Section 34.01, 34.02, Title 2, Texas Family Code, if any."

ANSWER. Assuming that Interrogatory No. 16 refers to the Texas State Department of Public Welfare protective services unit in Montgomery County, Texas, rather than the Montgomery County Welfare Department, from September 1, 1975, through May 31, 1976, 119 reports were received pursuant to Section 34.01, Texas Family Code. From January 1, 1976, through May 31, 1976, 4 reports were received pursuant to Section 34.02, Texas Family Code. Data for reports filed pursuant to Section 34.02, Texas Family Code, from September 1, 1975, through December 31, 1975, is not available.

INTERROGATORY NO. 17. "For the total number, if any, given in your answer to Interrogatory No. 16, state separately as to each such report:

a. The date and time of receipt of such report,

ANSWER. The information requested can be

obtained only by doing a desk review of all reports received by the Texas State Department of Public Welfare protective services workers assigned to Montgomery County. It is estimated that this would take a total of 5 manpower days.

b. Whether such report was oral or in writing,

ANSWER. See the answer to Interrogatory No. 17a.

c. Whether such report was from an identified source or from an anonymous source,

ANSWER. See the answer to Interrogatory No. 17a.

d. If same was an oral report, state whether it was made by telephone,

ANSWER. See the answer to Interrogatory No. 17a.

e. Whether any information received as a result of such report was placed in the "Central Registry" provided for by Section 34.06, Title 2, Texas Family Code,

ANSWER. See the answer to Interrogatory No. 17a.

f. The date on which such information was placed in such Central Registry,

ANSWER. See the answer to Interrogatory No. 17a.

g. If any such information was placed in a central registry, state whether it has been disseminated to other registries,

ANSWER. Statistical information which does not identify any individuals and which is derived from all combined reports in the CANRIS file is sent monthly to the National Study on Child Neglect and Abuse Reporting (formerly the National Clearinghouse on

Child Abuse and Neglect), c/o the American Humane Association, Children's Division, P. O. Box 1319, Denver, Colorado 80201.

h. Whether any children were seized as a result of such report,

ANSWER. No.

i. If you answer to the immediately preceding subinterrogatory is in the affirmative, state the date and time of such seizure,

ANSWER. Not applicable.

j. Whether any suit was thereafter filed by the Montgomery County Welfare Department under color of any procisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of such report.

ANSWER. No.

k. If your answer to the immediately preceding subinterrogatory is in the affirmative, state whether the State Department sought termination of the parent-child relationship in such suit.

ANSWER. Not applicable.

l. Whether any suit is pending, concluded by final trial or dismissed if such suit was filed by the Montgomery County Welfare Department under color of any provisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of such report.

ANSWER. No.

m. If your answer to the immediately preceding interrogatory is "concluded by final trial" state whether or not same resulted in termination of the parent-child relationship.

ANSWER. Not applicable.

INTERROGATORY NO. 18. "For the period September 1, 1975 through May 31, 1976, state the total number of petitions filed by the Montgomery County Welfare Department under color of provisions of Sections 17.01 and 17.02, Title 2, Texas Family Code, if any."

ANSWER. None.

INTERROGATORY NO. 19. "For the total number, if any, given as your answer to Interrogatory No. 18, state separately as to each such petitions filed:

a. The number of children seized,

ANSWER. Not applicable.

b. The date and time of seizure,

ANSWER. Not applicable.

c. The date and time of filing of such petition,

ANSWER. Not applicable.

d. Whether counsel was appointed for the minors seized , and if so, give the name and address and date of appointment of counsel,

ANSWER. Not applicable.

e. The names and locations of the court in which such petitions were filed and the cause number under which such petition was docketed,

ANSWER. Not applicable.

f. The date and time the child was first delivered to the court following seizure,

ANSWER. Not applicable.

g. The date, time and place of the hearing held providing for temporary care and protection of the child seized,

ANSWER. Not applicable.

h. Whether the parent, guardian, managing conservator, and/or person responsible for the care of the child received notice of such hearing.

ANSWER. Not applicable.

i. Names of other persons present at such hearing,

ANSWER. Not applicable.

j. The date and time of entry of any order providing for the temporary care and protection of the child seized,

ANSWER. Not applicable.

k. Whether temporary managing conservator was appointed for the child seized,

ANSWER. Not applicable.

l. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state the name and address of the person so appointed, any official title, and the relationship of such person to the child,

ANSWER. Not applicable.

m. The date and manner by which the parent, managing conservator, guardian, and/or person responsible for the care of the child seized was first notified of the seizure,

ANSWER. Not applicable.

n. The date and names, if any, by which these

parents, managing conservators, guardians, and/or persons responsible for the child were first notified of the filing of such petition,

ANSWER. Not applicable.

o. Whether or not the parent, managing conservator, guardian, and/or person responsible for the care of the child was furnished a copy of the petition filed, and if so, the date on which such copy was furnished,

ANSWER. Not applicable.

p. The date and time, if any, on which the parent, managing conservator, guardian, and/or person responsible for the care of the child first afforded a hearing after filing of such petition,

ANSWER. Not applicable.

q. Whether the child seized, if any, has been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child, and, if so, the date and time of such return,

ANSWER. Not applicable.

r. Whether, if the child seized has not been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child, the parent-child relationship has been terminated or termination is presently pending.

ANSWER. Not applicable.

ARTICLE 18

DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES (LEGE)

DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES

NOW COMES GENE LEGE, Director of Harris County Child Welfare, Defendant in the above-styled and number cause and answers Plaintiff's Original Interrogatories as follows:

INTERROGATORY NO. 1. "State your full name and address."

ANSWERS. Eugene Lege
Office: 4040 Milam, Suite 301, Houston, Texas 77006
Home: 5035 Hollybrook, Houston, Texas 77039

INTERROGATORY NO. 2. "State the name and address of your employer on March 25, 1976."

ANSWER. I am jointly employed by the Texas Department of Public Welfare (John H. Reagan Building, Austin, Texas 78701) and the Harris County Child Welfare Board (4040 Milam, Suite 301, Houston, Texas 77006)

INTERROGATORY NO. 3. "Were you the chief administrative officer in charge of the operation of Harris County Child Welfare on March 25, 1976?"

ANSWER. Yes.

INTERROGATORY NO. 4. "If your answer to Interrogatory No. 3 is in the affirmative, was Rex Downing under your supervision and control?"

ANSWER. While as Director of Harris County Child Welfare I am ultimately responsible for the acts of all employees of the agency within the framework of their official duties, I was not the immediate supervisor of Mr. Downing on March 25, 1976. His immediate

supervisor ia Ms. Gloria Roberts, Public Welfare Supervisor; her supervisor is Ms. Linda Jones, Program Director; her supervisor is Mr. Jerry Williams, Program Director; his supervisor is Mr. Gary Booker, Assistant Director; and I am Mr. Booker's supervisor.

INTERROGATORY NO. 5. "Did you receive any communication regarding the plaintiffs on March 25, 1976? If so, please state the nature of the communication and the content."

ANSWER. No.

INTERROGATORY NO. 6. "If your answer to Interrogatory No. 5 is in the affirmative, did any person in the employ of Harris County Child Welfare take action with regard to such communication? If so, state the name of such persons and the action taken."

ANSWER. Not applicable.

INTERROGATORY NO. 7. "As a result of any communication regarding the minor plaintiffs on March 25, 1976, did any employee of the State Department of Public Welfare seize the minor plaintiffs?"

ANSWER. The minor plaintiffs were taken into possession March 25, 1976 by an employee of the State Department of Public Welfare.

INTERROGATORY NO. 8. "If your answer is in the affirmative to Interrogatory No. 7, state the location and time of the seizure and the precise ground and legal authority for picking up the minor plaintiffs."

ANSWER. The minor plaintiffs were taken into possession at the central office of Harris County Child Welfare, 4040 Milam, at approximately 5:30 PM, pursuant to Section 17.01, Texas Family Code, to protect the children from an immediate danger to their

health or physical safety.

INTERROGATORY NO. 9. "If your answer to Interrogatory No. 7 is in the affirmative please state the nature and scope of the prior investigation before the seizure was made of the minor plaintiffs."

ANSWER. Prior to taking possession of the children, Harris County Child Welfare Unit received a report that the minor child, Paul Sims, appeared to be physically abused. Harris County Child Welfare Worker, Rex Downing, then proceeded to Osborne Elementary School to investigate the complaint pursuant to Section 17.01 of the Texas Family Code. At the school, Mr. Downing interviewed the school personnel, observed the injuries to the minor plaintiff, Paul Sims, in the presence of the school personnel, and requested that the minor plaintiff, Shawana Sims, be examined by the school nurse. Following the examination of the minor plaintiff, Mr. Downing spoke by telephone with the parents of the minor plaintiffs and received their permission for the children to be taken to the Harris County Child Welfare clinic for further examination. Following the examination of the minor plaintiffs, discussion of the results of the examination with the examining physician, and consultation with administrative personnel, the children were taken into possession pursuant to Section 17.01, Texas Family Code.

INTERROGATORY NO. 10. "If your answer to Interrogatory No. 7 is in the affirmative, state whether or not the minor plaintiffs were immediately taken before a magistrate following such seizure, giving the date and time thereof."

ANSWER. A petition was filed in Juvenile Court No. 1 of Harris County on March 26, 1976, requesting that Harris County Child Welfare be appointed temporary managing conservator of minor children and

such order was entered.

INTERROGATORY NO. 11. "If your answer to Interrogatory No. 7 is in the affirmative, were the circumstances surrounding the seizure reduced to writing? If so, will you attach a copy of such written records without a Motion to Produce?"

ANSWER. Yes. No.

INTERROGATORY NO. 12. "Is Betsy C. Conner an employee of the Department? If so, please state her official capacity."

ANSWER. Betsy C. Conner is an employee of the Harris County Child Welfare Board and her official capacity is that of a court representative of the Harris County Child Welfare Unit.

INTERROGATORY NO. 13. "If your answer to Interrogatory No. 7 is in the affirmative, where were the minor plaintiffs taken after they were seized?"

ANSWER. They were taken to the Rosaline Thomas Foster Home. This is a foster home licensed by the Texas Department of Public Welfare.

INTERROGATORY NO. 14. "For what period of time did the minor plaintiffs remain at the location given as your answer to Interrogatory No. 13?"

ANSWER. The minor plaintiffs, Sabrina and Shawana, remained at the foster home until April 6, 1976, at which time they were placed with their maternal grandparents. (Mr. and Mrs. James Carter, 992 Majorie, Houston). The minor plaintiff, Paul, remained in the foster home until May 5, 1976, when the child was returned to his parents pursuant to the order entered in this cause by the Honorable John L. Singleton.

INTERROGATORY NO. 15. "Were the minor plaintiffs examined by a medical doctor during the time given as your answer to Interrogatory No. 14?"

ANSWER. On March 27, 1976, the minor plaintiff, Paul Sims, was examined by Dr. Jesus Diaz and following such examination he was hospitalized at St. Joseph's Hospital until April 7, 1976. He was also seen by a specialist consultant, Dr. Robert F. Austin.

INTERROGATORY NO. 16. "If your answer to Interrogatory 15 is in the affirmative, state:

a. The name and business address of such doctor,

ANSWER. Dr. Jesus Diaz, St. Joseph's Professional Bldg., 2000 Crawford and Dr. Robert F. Austin, St. Joseph's Prof. Bldg., 2000 Crawford.

b. The official capacity of such doctor with respect to the Harris County Child Welfare Unit,

ANSWER. None.

c. Whether or not such doctor had a written consent for such examination from adult plaintiffs at the time of such examination,

ANSWER. No.

INTERROGATORY NO. 17. "On March 25, 1976, did the records of Harris County Child Welfare Unit contain medical histories of the minor plaintiffs, Paul or Shawana Sims?"

ANSWER. Yes.

INTERROGATORY NO. 18. "Had Harris County Child Welfare had prior transactions with respect to the minor plaintiffs, Paul and Shawana Sims, during the course of which records were developed? If so, please

state the nature of such transactions."

ANSWER. The minor plaintiff, Paul Sims, was placed in a Harris County Child Welfare foster home on January 26, 1968. On June 16, 1971, the parental rights of the natural parents were terminated and the child was placed in the custody of Harris County Child Welfare for purposes of placing the child for adoption. On December 10, 1973, Harris County Child Welfare placed the child with John and Mary Sims for purposes of adoption.

The minor plaintiff, Shawana Sims, was placed in a Harris County Child Welfare foster home on June 10, 1973. On July 22, 1974, the parental rights of the natural parents of the child were terminated and Harris County Child Welfare was appointed managing conservatorship for purposes of placing the child for adoption. On August 16, 1974, Harris County Child Welfare placed the child with John and Mary Sims for purposes of Adoption.

INTERROGATORY NO. 19. "If your answer to Interrogatories No. 17 and 18 is in the affirmative, were such records furnished the examining doctor named in Interrogatory No. 16?"

ANSWER. The examining physician only had access to the medical records at the time of examining the children.

INTERROGATORY NO. 20. "State the length of time between the time of the seizure of the minor plaintiffs and the time of filing any legal action.

ANSWER. The children were taken into possession at approximately 5:30 PM on March 25, 1976, and A Suit for Protection of a Child in an Emergency was filed at 4:54 PM, on March 26, 1976.

INTERROGATORY NO. 21. "State the date and time when a legal relationship was first established between you or your department and the minor plaintiffs and the nature of such legal relationship."

ANSWER. At approximately 5:30 PM, on March 25, 1976, Harris County Child Welfare Unit took possession of the children to protect them from immediate danger pursuant to Section 17.01 of the Texas Family Code.

INTERROGATORY NO. 22. "On March 25, 1976, did the adult plaintiffs make requests of the Department for examination of the minor plaintiffs by a doctor of their choice? If so, was such request granted?"

ANSWER. Yes. No.

INTERROGATORY NO. 23. "Did the Department make the minor plaintiffs available for examination by Dr. Eula Fay Perry on Saturday, April 3, 1976?"

ANSWER. No.

INTERROGATORY NO. 24. "If your answer to Interrogatory No. 23 is in the negative, when did the Department first make the children available?"

ANSWER. The minor plaintiffs, Shawana and Sabrina were made available on March 31, 1976, for examination at the 4040 Milam Office by a physician of their choice. The minor plaintiff, Paul, was hospitalized at St. Joseph's Hospital from March 27, 1976 until April 7, 1976.

INTERROGATORY NO. 25. "State where each of the minor plaintiffs spent the night of March 25, 1976, and on whose authority."

ANSWER. The children were in a Texas Department of Public Welfare licensed foster home at

4134 Clover, Houston, Texas, placed on the authority of Harris County Child Welfare pursuant to Section 17.01 of the Texas Family Code.

INTERROGATORY NO. 26. "State the whereabouts of each of the minor plaintiffs from the night of March 25, 1976 through the night of April 4, 1976 giving the exact locations and names of parties responsible for each of the minor plaintiffs."

ANSWER. The minor plaintiff, Paul, spent March 26 and 27, in the Rosaline Thomas Foster Home (4134 Clover, Houston, Tx.) in the care of the foster parents. The minor plaintiff, Paul, spent March 27 through April 7, 1976, in St. Joseph's Hospital under the care of Dr. Jesus Diaz. The minor plaintiffs, Sabrina and Shawana, spent March 25 until April 4, 1976, at the aforesaid foster home under the care of the foster parents.

INTERROGATORY NO. 27. "State as to the minor plaintiffs, Sabrina and Shawana, did the Department arrange to have them attend school during their detention by the Department?"

ANSWER. Yes.

INTERROGATORY NO. 28. "If your answer to Interrogatory No. 27 is in the affirmative, please state where and when the two minor plaintiffs attended school. Please state the dates the minor plaintiffs were absent from school.

ANSWER. Sabrina and Shawana Sims were absent from school on March 26, 29, 30, 31, April 1, 2, 5, and 6. They resumed classes at Osborne Elementary on April 7, 1976, and attended regularly after that date under the supervision of their grandparents, Mr. and Mrs. James Carter.

INTERROGATORY NO. 29. "If any of the minor plaintiffs were caused to attend school other than where they were enrolled, state the name of the minor plaintiff and the reason therefore (sic)."

ANSWER. On April 12, 1976, the minor plaintiff, Paul, was enrolled in Sunnyside Elementary School and attended this school unitl May 5, 1976, when he ordered to be returned to his parents by the Honorable John L. Singleton. The child attended Sunnyside Elementary School, as the foster home was in the geographic area for that school.

INTERROGATORY NO. 30. "For the period of March 25, 1976 to May 5, 1976, state the dates and locations set by the Department for visitation between the adult and minor plaintiffs."

ANSWER. Mr. and Mrs. Sims visited Paul, Shawana, and Sabrina Sims at St. Joseph's Hospital on March 31, 1976. Mr. and Mrs. Sims visited Paul several times while Paul was in the hospital.

When Paul was released from St. Joseph's Hospital he stated that he wanted to return to the foster home where he had been previously. Visitation was arranged for Sabrina and Shawana to see their parents twice per week. Mr. James Carter felt visits should be supervised by him and limited to two or three per week. Visits were made at the convenience of Mr. and Mrs. Carter and Mr. and Mrs. Sims.

INTERROGATORY NO. 31. "From the date on which any legal relationship was established between you and the minor plaintiffs up to May 6, 1976, were you served with any process at the instance of the adult plaintiffs whereby they sought return of the minor plaintiffs? Was any person in the Department served with such process?"

ANSWER. Yes.

INTERROGATORY NO. 32. "If your answer to Interrogatory No. 31 is in the affirmative, state the nature of such process."

ANSWER. Yes, I was so served. I was served with a Writ of Habeas Corpus on April 2, 1976, such Writ to be heard in Juvenile Court No. 1. I was also served with Plaintiff's Application for a Preliminary Injunction on April 29, 1976, such Application to be heard in the United States District Court for the Southern District of Texas.

INTERROGATORY NO. 33. "From March 25, 1976, to May 5, 1976, did counsel for the adult plaintiffs request that the Department furnish a letter stating the Department had the minor plaintiffs in their possession and control?"

ANSWER. Yes.

INTERROGATORY NO. 34. "If your answer to Interrogatory is in the affirmative, did the Department furnish such letter?"

ANSWER. No.

INTERROGATORY NO. 35. "Did you file or cause to be filed any formal or informal motion seeking transfer of any pending litigation regarding the minor plaintiffs from courts of Harris County, Texas to the courts of Montgomery County, Texas?"

ANSWER. No.

INTERROGATORY NO. 36. "Does the Harris County Child Welfare Unit transmit reports of child abuse registered pursuant to 34.06, Title 2, Texas Family Code?"

ANSWER. Yes.

INTERROGATORY NO. 37. "Have you placed or caused to be placed the name or names of any of the plaintiffs in any central file or register of child abusers?"

ANSWER. Yes.

INTERROGATORY NO. 38. "If your answer to Interrogatory No. 37 is in the affirmative,

a. State the Date or dates when plaintiffs names were placed in such file or register,

ANSWER. CANRIS report is attached.

b. State the exact information transmitted."

ANSWER. See answer to Interrogatory No. 38(a).

INTERROGATORY NO. 39. "From and after 9:00 AM on May 5, 1976, through May 14, 1976, did you or any person at Harris County Child Welfare Unit or your attorneys transfer information developed regarding any of the plaintiffs to the Montgomery County, Texas Welfare Department?"

ANSWER. Yes.

INTERROGATORY NO. 40. "If your answer to Interrogatory No. 39 is in the affirmative, was such information oral, written, or both? State the purpose of such transfer of information, if any."

ANSWER. Yes, both. The purpose of such transfer of information was to report the circumstances of the children to the Texas State Department of Public Welfare protective service staff assigned to Montgomery County as well as the Montgomery County Juvenile Probation Department so that the children would receive protective services in Montgomery County.

INTERROGATORY NO. 41. "Does the Harris County Child Welfare Unit have written guidelines for the selection of foster parents? If so, will you without a Motion to Produce attach a copy of such written guidelines?"

ANSWER. Yes. (A copy of the guidelines is attached)

INTERROGATORY NO. 42. "Does the Department have a regular schedule by which foster homes are re-evaluated?"

ANSWER. Yes.

INTERROGATORY NO. 43. "If your answer to Interrogatory No. 42 is in the affirmative, when was such a re-evaluation conducted as to the homes in which the minor plaintiffs were placed?"

ANSWER. Children have been placed in the Rosaline Thomas Foster Home for varying times from 1968 to present. Foster children have been in this home most of this period of time. It was first licensed on February 29, 1968 and revalidated yearly.

INTERROGATORY NO. 44. "State the names of each employee, agent, or consultant, of Harris County Child Welfare who worked with the adult or minor plaintiffs."

ANSWER. Doctors Blair and Rita Justice, Comprehensive Services for Education; Rex Downing, Public Welfare Worker; Gloria Roberts, Public Welfare Supervisor; Linda Jones, Program Director; Jerre Williams, Program Director; Dr. Marie Surgi; Betsy Conner, Court Representative; Dr. Jesus Diaz; and Dr. Robert Austin.

INTERROGATORY NO. 45. "Did the Department suggest that the adult plaintiffs submit to counseling?"

ANSWER. Yes.

INTERROGATORY NO 46. "Did the adult plaintiffs attend counseling as suggested by the Department?"

ANSWER. Yes.

INTERROGATORY NO. 47. "If your answer to Interrogatory No. 46 is in the affirmative, was the choice of counselors made by Harris County Child Welfare or by John and Mary Sims?"

ANSWER. John and Mary Sims.

INTERROGATORY NO. 48. "If the adult plaintiffs attended counseling, state the name and address of each counseling agency or consultant where to your knowledge they attended counseling."

ANSWER. Blair and Rita Justice
University of Texas
School of Public Health
Houston, Texas 77025

INTERROGATORY NO. 49. "If your answer to Interrogatory No. 46 is in the affirmative were any written or oral reports made to Harris County Child Welfare Unit? If so, will you produce any such written or oral reports without a Motion to Produce?"

ANSWER. Oral reports were made to Harris County Child Welfare. No.

INTERROGATORY NO. 50. "Who is responsible to pay for any charges incurred for counseling of John or Mary Sims? What total amount has been incurred therefor on the date of your answer to these interrogatories?"

ANSWER. John and Mary Sims are responsible for

the costs, and the total amount of costs incurred is not a matter within my knowledge.

INTERROGATORY NO. 51. "Who is responsible to pay for any charges incurred for foster home care of the minor plaintiffs for the period March 25, 1976 to May 5, 1976? What is the total amount that was incurred for such care?"

ANSWER. Harris County Child Welfare Unit is responsible. The total amount of charged incurred for such care was $246.16.

INTERROGATORY NO. 52. "Prior to March 25, 1976, did Harris County Child Welfare Unit consent to adoption of any children by the adult plaintiffs John and Mary Sims?"

ANSWER. Yes.

INTERROGATORY NO. 53. "If your answer to Interrogatory No. 52 is in the affirmative, did the records of Harris County Child Welfare Unit on March 25, 1976 contain any information made in relation to the adoption studies?"

ANSWER. Yes.

INTERROGATORY NO. 54. "If your answer to Interrogatory No. 53 is in the affirmative will you produce such records without a Motion to Produce?"

ANSWER. No.

INTERROGATORY NO. 55. "Do you have any photographs of the minor plaintiffs made on March 25, 1976? If so, will you produce such photos without a Motion to Produce?

ANSWER. Yes. Attached are photographs taken of Paul Sims on March 25, 1976. Also attached are photographs of Paul Sims taken on March 27, 1976.

INTERROGATORY NO. 56. "If your answer to Interrogatory No. 55 is in the affirmative who made such photographs?"

ANSWER. Mr. Rex Downing, Public Welfare Worker made the photographs on March 25, 1976. Officer R.G. Hickman of the Houston Police Department made the photographs on March 27, 1976.

INTERROGATORY NO. 57. "Does Marie L. Surgi perform services for Harris County Child Welfare? If so, please state how long she has performed such services, her relationship with Harris County Child Welfare, and her compensation."

ANSWER. Yes. Since July 1, 1972, Dr. Surgi has acted as a consultant to the agency in matters concerning the health of children to whom the agency is providing protective services. Dr. Surgi is paid by contract for three quarters time at the rate of $32,400 per year.

INTERROGATORY NO. 58. "For the period beginning September 1, 1975 through May 31, 1976, state the total number of reports received by the Montgomery County Welfare Department under color of provision of §34.01, §34.02, Title 2, Texas Family Code, if any."

ANSWER. Assuming the interrogatory refers to Harris County Child Welfare Unit rather than Montgomery County Welfare Department, from September 1, 1975, until May 31, 1976, Harris County Child Welfare Unit received 8,820 reports pursuant to the provisions of Sections 34.01 and 34.02, Texas Family Code.

INTERROGATORY NO. 59. "For the total number, if any, given in your answer to Interrogatory No. 58, state separately as to each such report,

a. The date and time of receipt of such report,

ANSWER. Assuming the interrogatory refers to Harris County Child Welfare Unit rather than Montgomery County Welfare Department, separate statements to provide the detailed information requested in Interrogatory 59 (a) through 59 (m) would require a minimum average of one hour per report for a professional staff person. Based on the number of reports received, the information requested in Interrogatory 59 (a) through 59 (m) would require an estimated 8,820 hours for compilation.

b. Whether such report was oral or in writing,

ANSWER. See answer to Interrogatory 59(a).

c. Whether such report was from an indentified source or from an anonymous source,

ANSWER. See answer to Interrogatory 59(a).

d. If same was an oral report, state whether it was made by telephone,

ANSWER. See answer to Interrogatory No. 59(a).

e. Whether any information received as a result of such report was placed in the "Central Registry" provided for by §34.06, Title 2, Texas Family Code,

ANSWER. See answer to Interrogatory No. 59(a).

f. The date on which such information was placed in such Central Registry,

ANSWER. See answer to Interrogatory No. 59(a).

f. If any such information was placed in a central registry,

ANSWER. See answer to Interrogatory No. 59(a).

g. If any such information was placed in a central registry, state whether it has been disseminated to other registries,

ANSWER. See answer to Interrogatory No. 59(a).

h. Whether any children were seized as a result of such report,

ANSWER. See answer to Interrogatory No. 59(a).

i. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state the date and time of such seizure,

ANSWER. See answer to Interrogatory No. 59(a).

j. Whether any suit was thereafter filed by the Montgomery Coundy (sic) Welfare Department under color of any provisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of such report,

ANSWER. See answer to Interrogatory No. 59(a).

k. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state whether the State Department sought termination of the parent-child relationship in such suit,

ANSWER. See answer to Interrogatory No. 59(a).

l. Whether any suit is pending, concluded by final trial or dismissed if such suit was filed by the Montgomery County Welfare Department under color of any provisions of Chapter 17 or Chapter 11, Title 2, Texas Family Code, as a result of any report,

ANSWER. See answer to Interrogatory No. 59(a).

m. If your answer to the immediately preceding interrogatory is "concluded by final trial" state whether or not same resulted in termination of the parent-child relationship."

ANSWER. See answer to Interrogatory No. 59(a).

INTERROGATORY NO. 60. "For the period September 1, 1975 through May 31, 1976, state the total number of petitions filed by the Montgomery County Welfare Department under color of provisions of §17.01 and §17.02, Title 2, Texas Family Code, if any.

ANSWER. Assuming the interrogatory refers to Harris County Child Welfare Unit rather than Montgomery County Welfare Department, from September 1, 1975, until May 31, 1976, Harris County Child Welfare Unit filed 326 petitions pursuant to Sections 17.01 and 17.02, Texas Family Code.

INTERROGATORY NO. 61. "For the total number, if any, given as your answer to Interrogatory No. 18, state separately as to each such petitions filed,

a. The number of children seized,

ANSWER. Assuming that the interrogatory refers to Harris County Child Welfare Unit rather than Montgomery County Welfare Department, the number of children taken into possession pursuant to Sections 17.01 and 17.02, Texas Family Code, was 479.

b. The date and time of seizure,

ANSWER. Assuming that the interrogatory refers to Harris County Child Welfare Unit rather than Montgomery County Welfare Department, separate statements to provide the detailed information requested in Interrogatory 61 (b) through 61 (r) would require a minimum average of one hour per report for a professional staff person. Based on the number of petitions filed, the information requested in Interrogatory 61 (b) through 61 (r) would require an estimated 479 hours of compilation.

c. The date and time of filing of such petition,

ANSWER. See answer to Interrogatory No. 61(b).

d. Whether counsel was appointed for the minors seized, and if so, give the name and address and date of appointment of counsel,

ANSWER. See answer to Interrogatory No. 61(b).

e. The names and locations of the court in which such petitions were filed and the cause number under which such petition was docketed,

ANSWER. See answer to Interrogatory No. 61(b).

f. The date and time the child was first delivered to the court following seizure,

ANSWER. See answer to Interrogatory No. 61(b).

g. The date, time and place of the hearing held providing for temporary care and protection of the child seized,

ANSWER. See answer to Interrogatory No. 61 (b).

h. Whether the parent, guardian, managing conservator, and/or person responsible for the care of the child received notice of such hearing,

ANSWER. See answer to Interrogatory 61(b).

i. Names of other persons present at such hearing,

ANSWER. See answer to Interrogatory No. 61 (b).

j. The date and time of entry of any order providing for the temporary care and protection of the child seized,

ANSWER. See answer to Interrogatory No. 61 (b).

k. Whether temporary managing conservator was appointed for the child seized,

ANSWER. See answer to Interrogatory No. 61 (b).

l. If your answer to the immediately preceding sub-interrogatory is in the affirmative, state the name and address of the person so appointed, any official title, and the relationship of such person to the child,

ANSWER. See the answer to Interrogatory 61 (b).

m. The date and manner by which the parent, managing conservator, guardian, and/or person responsible for the care of the seized child was first notified of the seizure,

ANSWER. See answer to Interrogatory No. 61 (b).

n. The date and names, if any, by which these parents, managing conservators, guardians, and/or persons responsible for the child were first notified of the filing of such petition,

ANSWER. See answer to Interrogatory No. 61 (b).

o. Whether or not the parent, managing conservator, guardian, and/or person responsible for the care of the child was furnished a copy of the petition filed, and if so, the date on which such copy was furnished,

ANSWER. See answer to Interrogatory No. 61 (b).

p. The date and time, if any, on which the parent, managing conservator, guardian, and/or person responsible for the care of the child was first afforded a hearing after filing of such petition,

ANSWER. See answer to Interrogatory No. 61 (b).

q. Whether the child seized, if any, has been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child and, if so, the date and time of such return,

ANSWER. See answer to Interrogatory No. 61(b).

r. Whether, if the child seized has not been returned to the possession of the parent, managing conservator, guardian, and/or person responsible for the care of the child, the parent-child relationship has been terminated or termination is presently pending.

ANSWER. See answer to Interrogatory No. 61 (b).

ARTICLE 19

DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES (SURGI)

ARTICLE 19, DEFENDANT'S ANSWERS TO PLAINTIFF'S ORIGINAL INTERROGATORIES

NOW COMES MARIE SURGI, M.D., Defendant in the above-styled and numbered cause and answers Plaintiff's Original Interrogatories as follows:

INTERROGATORY NO. 1. "State your full name and address."

ANSWER. MARIE LOUISE SURGI, M.D.
1907 WYNDALE
HOUSTON, TEXAS 77030 (home)

4040 MILAM
HOUSTON, TEXAS 77006 (office)

INTERROGATORY NO. 2. "Do you have a private practice of medicine? If so, what is your office address?"

ANSWER. No.

INTERROGATORY NO. 3. "Do you perform services as a medical doctor for Harris County Child Welfare? If so, what are the terms under which you perform such services?"

ANSWER. I see all the children who come into the custody of Harris County Child Welfare at intake, to determine and evaluate the health status of the child and make recommendations for medical referrals and future follow-up care. I also see children of families with whom our family service unit is working to determine health status and need for referral or follow-up care or need of definitive counseling. (I am paid by contract for three-quarters time at the rate of $32,400 per year).

INTERROGATORY NO. 4. "Are you paid for your services by Harris County Child Welfare?"

ANSWER. Yes. See answer to Interrogatory No. 3.

INTERROGATORY NO. 5. "Do you have any areas of specialization in the practice of medicine? If so, what are those areas of specialization?"

ANSWER. I have been a Pediatrician for 34 years. For 18 years I have had a private Pediatric practice. I have been employed as a Pediatrician in Public Health for 10 years, and for 4 years I have worked for Harris County Child Welfare.

INTERROGATORY NO. 6. "Were you directed to examine minor plaintiffs by an employee of the State Department of Public Welfare on March 25, 1976?"

ANSWER. Yes, I was asked to examine the three Sims children by Mr. Rex Downing on March 25, 1976.

INTERROGATORY NO. 7. "If your answer to Interrogatory No. 6 is in the affirmative, did you prepare written reports covering such examination? If so, did you attach to your report what you refer to as 'abuse sheets'?"

ANSWER. I did prepare written reports and did attach 'abuse sheets'.

INTERROGATORY NO. 8. "If your answer to Interrogatory No. 7 is in the affirmative, why did you denote such reports as 'abuse sheets' rather than 'injury reports' or by some other designation?"

ANSWER. The sheets referred to as 'abuse sheets' are 2 sheets, one depicting the anterior form of a child and the other depicting the posterior form of a child. The sheet bears no caption. The sheets enable me to record lesions of the skin whether these are due to physical trauma or natural causes. The physical trauma may be due to accident or may be deliberately caused most often punitively. In this case the sheets were referred to as 'abuse sheets' since they record severe lesions due to

physical discipline. There are several lesions on the sheets attributed to accidental trauma and these are so designated.

(Abuse is defined in my medical dictionary as misuse, wrong use, especially excessive use, of anything. Webster's defines abuse as ill-treatment, the excessive or injudicious use of anything; insult; violation.)

(Child Abuse as defined in Henry Kempe's book on *Helping the Battered Child and his Family* is defined as any non-accidental act of omission of a parent or legal custodian resulting in physical or emotional injury to a child. For legal purposes the term "child abuse" has usually been reserved for cases involving serious physical injuries. I consider Paul's injuries serious.)

INTERROGATORY NO. 9. "What is the basis for your statement on your report dated March 25, 1976, as to the minor plaintiff Shawana Sims that 'parents need counseling in child discipline?' "

ANSWER. Since Shawana showed evidence of recent trauma due to being paddled and in the light of Paul's more serious trauma, I felt the parent-child relation would benefit from proper counseling and the learning of other ways to cope with discipline besides severe physical punishment.

INTERROGATORY NO. 10. "How did you conclude that Paul Edward Sims was an 'abused child' as stated on your report of March 25, 1976?"

ANSWER. Paul showed extensive bruising and deep and tender areas over both buttocks-anterior and posterior thighs and posterior legs. There were open bleeding lesions on each buttock. (See photographs attached of Paul Sims taken at time of my examination. Plaintiffs may refer to photographs included with Defendant's Proposed Stipulations.) Reference should

also be made to photographs attached to Defendant Gene Lege's Answer to Interrogatory No. 55.

INTERROGATORY NO. 11. "What is the meaning of the statement on your report of March 25, 1976, on Paul Sims that 'one can envision a pattern to the rotation of sites?' "

ANSWER. I was told in the history given by the parents that "spanking was alternated because if he was spanked in the same area more than once, he would blister." The mother confirmed this in the examination room, and seeing the number of places in which Paul was spanked (buttocks-anterior, thighs, posterior thighs-posterior calves) made it easy to envision such a rotation.

INTERROGATORY NO. 12. "Did you have written consent from the parents authorizing your examination of the minor plaintiffs on March 25, 1976?"

ANSWER. No.

INTERROGATORY NO. 13. "State the normal size of the vaginal opening of a female, age eight years."

ANSWER. In my experience a vaginal opening in an 8 year old child is usually less than 2/3 inches diameter. An enlarged opening may be due to trauma or self-fingering or exploration. It is possible that a child who is physically mature at an early age may have a larger opening. I also see children who have been sexually molested. In recording physical findings, I make note of the enlargement without any allegations as to the cause.

INTERROGATORY NO. 14. "With respect to your report on Sabrina Sims on March 25 that the child had an 'Enlarged vaginal opening (2/3 in diameter)' that the 'child said she knew it but denied anyone did it or that she,' what question did you ask that illicited this response from the child?"

ANSWER. I probably told the child she was sort of large "down here." "Has anything happened to hurt you?" Her answer came as a surprise. I frequently ask children if they scratch and touch themselves in this area. She said she didn't. I did not pursue this since I had no reason to, and I certainly do not ask children of this age explicit questions about sexual molestation unless I have a definite history of such molestation.

INTERROGATORY NO. 15. "To what did you refer in your report on Paul Sims of March 25, 1976, by the statement 'get old history?' "

ANSWER. I suggested getting "old history" on Paul because his parents claimed he had a blood defect that caused him to bleed and bruise easily and they claimed they were told that at the time of the adoption. Since Paul was so bruised, I felt it was imperative to know if he had a blood dyscrasia.

INTERROGATORY NO. 16. "Did you examine the minor plaintiff Paul or Shawana Sims prior to March 25, 1976?"

ANSWER. I saw and examined Shawana at intake into the agency on 6-14-73 and again on 6-29-73 when she came back for laboratory screening. I saw and examined Paul on 2-8-73 when he was screened in our laboratory.

INTERROGATORY NO. 18. "If your answer to Interrogatory No. 17 is in the affirmative, did you refer to records of any such prior examinations?"

ANSWER. Yes, if you mean question 16 and referring to dates listed in 17.

ARTICLE 20

ORDER OF DISMISSAL OF DEFENDANT, ERNEST COKER, SR.

ARTICLE 20, ORDER OF DISMISSAL OF DEFENDANT, ERNEST COKER, SR.

The Court having considered the motion of the Defendant, Ernest Coker, Sr., by and through John L. Hill, Attorney General of Texas, to dismiss this cause as to said defendant, and the Court having considered the pleadings herein, and having been advised in open court of the agreement of the Plaintiffs to said motion,

It is hereby ORDERED that this cause is hereby dismissed as to the Defendant, Ernest Coker, Sr.

Done this 16th day of August, 1976, at Houston, Harris County, Texas.

ARTICLE 21

ORDER OF DISMISSAL OF DEFENDANT ROBERT L. LOWRY

ARTICLE 21, ORDER OF DISMISSAL OF DEFENDANT ROBERT L. LOWRY

At a hearing before the Court on August 4, 1976, Counsel acting on the behalf of defendant Robert L. Lowry, Judge of the Juvenile Court of Harris County, Texas, orally moved the Court to rule upon the Rule 12 Motion to Dismiss for Failure to State a Cause of Action that had been filed with the Court previously on behalf of said defendant. Counsel for plaintiffs orally stated to the Court that plaintiffs did not oppose the Motion or the dismissal of Judge Lowry from the suit. The Court having considered the pleadings on file and having heard the argument of Counsel thereon is of the opinion that the Motion to Dismiss should be granted. It is accordingly

ORDERED by the Court that this cause is dismissed as to defendant Robert L. Lowry, Judge of the Juvenile Court of Harris County, Texas, as of this 15th October, 1976, at Houston, Texas.

ARTICLE 22

MOTION FOR CONSOLIDATION OF ACTIONS

ARTICLE 22, MOTION FOR CONSOLIDATION OF ACTIONS

Now comes Plaintiffs in Civil Action Number 76-H-1120, entitled WOODS et al v. State Department of Public Welfare et al, and moves the Court for consolidation with the Civil Action now pending before this Court entitled SIMS et al v. Texas Department of Public Welfare, et al, and would further show the Court as follows:

1. That the two Actions have the following similar features:

a. There are common defendants in both cases,

b. In each case the constitutionality of inter-relating portions of Title 2, Texas Family Code is challenged,

c. In each case injunctive and declaratory relief is sought,

d. In each case the convening of a three judge panel is requested,

e. In each case the proof or evidence will be the same or similar,

f. In each case the pattern and practice of defendants actions are the same or similar.

2. Consolidation:

a. Would facilitate the business of this Court,

b. Would facilitate the orderly and speedy administration of justice,

c. Would enable all parties to avoid unnecessary duplication of cost, expenses, and time in the litigation of the controversies,

d. Would not in any way prejudice the defendants, but would instead enhence (sic) their ability to defend two Actions in one hearing.

3. This Court could, therefore, pass on the issues of the above Actions in one hearing and thereby promote the convenient administration of Justice.

4. Consolidation is permitted under Rule 42(a) Federal Rules of Civil Procedure.

5. That one of the above Actions is a Class Action and that Class Action has not yet been certified. That this, however, should not be an obstacle to consolidation, for it is well settled that before a class is certified it may be assumed to be a proper class and proceedings conducted according (sic). *Leisner v. N.Y. Tel. Co.*, S.D. N.Y. 1973) 358 F Supp. 359. *City of Inglewood v. City of Los Angeles*, (Ca 9th 1971) 451 F Zd (sic) 948.

6. That even assuming that the class is not ultimately certified, the Actions can still be consolidated as individual actions without the class feature.

7. That consolidation has been ordered in other cases even prior to there (sic) having been an answer filed if it is clear that common questions are involved. *Shultz v. Mfg'rs & Traders Trust Co.*, 29 F Supp. 37 (WD N.Y. 1939).

8. The Federal Courts have stated that even if one of the claims proposed to be consolidated is alleged to be frivulous (sic) is no reason to deny consolidation. This not to suggest, of course, that either of the two Actions here involved is frivulous (sic). *Kuerschner & Rauchwarenfabuk, A.G. v. N.Y. Trust Co.*, (S.D. N.Y. 1956) 22 F R Serv. 42 a. 4, Case 2.

9. The Federal Courts have also held that consolidation would be in order even if the two cases are

proceeding under different theories of relief.

10. Furthermore, there would be a better clarafication (sic) of the issues when the two cases are before a single three judge panal (sic) because of the interrelating character of the statutes being challenged. Each Action, on its own, cannot show the full gravaman (sic) and impact of the statutory scheme and thus consolidation would aid in this regard.

11. Consolidation should be encouraged and allowed whenever reasonable and in particular where, as here, there are Actions against common defendants to redress a common wrong, and where there are a substantial number of common issues of fact and law. *Altala Hydratane Gas Inc. v. Lowry Zims Co.*, (N D Miss. 1966) 41 FRD 164.

12. An analogous case is *Citizens Committee v. Volpe*, (SD N.Y. 1969) 297 F Supp. 804, where two cases seeking to bar construction of an expressway were ordered consolidated.

13. An even closer case to the cases at bar is *Miranda v. Nelson*, (D Ariz. 1972) 351 F Supp. 735 aff'd (1973) 413 U.S. 902, where two cases challenging State Constitutional and statutory provisions relative to alienage were consolidated over State objections.

14. And yet a closer case is *United States v. Chicago*, (N D Ill. 1974) 385 F Supp. 540, where three Actions proceeding under 42 USC 1983 alleging, as in the case at bar, deprivations of civil rights were consolidated. There the Court stated that the fact that the Actions were not at the same stage of discovery, or that they were proceeding under different theories of relief was not fatal to consolidation.

WHEREFORE, Plaintiffs request and pray the Court to consolidate Civil Actions Nos. 76-H-665 and 76-H-1120 for the reasons hereinabove stated.

ARTICLE 23

PLAINTIFF'S RESPONSE AND OBJECTION TO DEFENDANT'S MOTION TO STAY

ARTICLE 23, PLAINTIFF'S RESPONSE AND OBJECTION TO DEFENDANT'S MOTION TO STAY

TO THE HONORABLE JUDGES OF SAID COURT:

Now comes JOHN PLEASANT SIMS, ET AL., Plaintiff in the above styled and numbered cause and respectfully files this Response and Objection To Defendant's Motion To Stay injunction pending appeal and for cause would show the Court the following:

I.

That this District Court should not have obstained (sic) as obstention (sic) was not warranted and would be improper under this unique and compelling circumstances of this cause.

II.

That to stay this Court's order prohibiting the use of the Child Abuse and Neglect Report and Inquiry System (CANRIS) as provided for by Title 2 section 34.06 of the Texas Family Code for information gathering and dissemination of child abuse and neglect reports would not cause Defendants irreparable harm, however, Plaintiffs would suffer irreparable harm as to the method authorized and utilized by said section, in so far as information gathering and dissemination of child abuse or neglect reports about identified individuals prior to and without judicial determination of abuse and or neglect. In addition, the public interest would be best served by denial of Defendants' Motion To Stay pending appeal.

III.

That the application of this Court's standard of clear and convincing evidence rather than the standard set forth in Title 1, Section 11.15 of the Texas Family Code

would not cause Defendants' irreparable harm nor would such standard place an improper and excessive burden on the state when it institutes proceedings to protect children from abuse and neglect. Further that Plaintiffs and the public interest would be best served by application of this Court's standard.

IV.

That to require the appointment of an attorney ad litem for the child within the 24 hour exparte (sic) hearing in all suits affecting the parent-child relationship in which the state is a party, would not be impossible.

V.

That to require notice and a hearing to parents prior to actions authorized by Title 2, section 34.05(c) of the Texas Family Code would not dangerously delay treatment to children in need of medical attention.

VI.

Further that a granting of any portion of Defendants' Motion To Stay would cause Plaintiff's irreparable harm and would not be in the best interest of the public as the appeal process is lengthy and many of the grounds upon which Defendants' appeal would be based as stated by them in their Motion To Stay are without merit.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendants' Motion To Stay be denied and for such or (sic) relief to which they are entitled.